

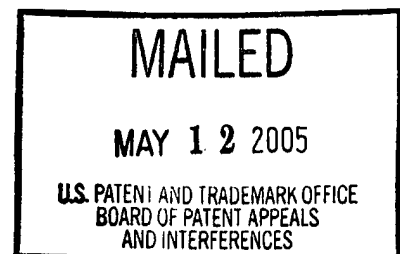
The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Ex parte XINGWU WAND, CHAONAN CHEN,
and HUIHUI DUAN

Appeal No. 2005-1041
Application No. 10/035,985



REMAND TO THE EXAMINER

This application was electronically received at the Board of Patent Appeals and Interferences on March 7, 2005. A review of the application has revealed that the application is not ready for a decision on appeal. Accordingly, the application is herewith being electronically remanded to the examiner. The matter requiring attention prior to the decision is identified below.

A Reply Brief was timely filed on November 23, 2004. However, the Reply Brief did not comply with respect to the criteria set forth in 37 CFR § 41.41(a)(2) which states:

(a)(2) A reply brief shall not include any new or non-admitted amendment, or any new or non-admitted affidavit or other evidence. See § 1.116 of this title for amendments, affidavits or other evidence filed after final action but

before or on the same date of filing an appeal and § 41.33 of amendments, affidavits or other evidence filed after the date of filing the appeal.

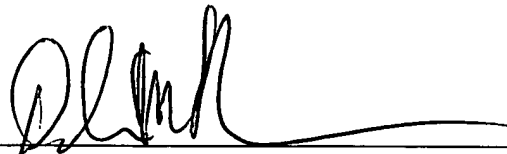
In particular, the attachments "Fuel Cells" and "Microbioreactors producing H₂ for conventional cells" constitute new evidence. Accordingly, this Reply Brief should not have been entered.

Accordingly, it is

ORDERED that the application be **remanded** to the examiner to:

1. notify appellants in writing that the Reply Brief, filed November 23, 2004, is not in compliance with 37 CFR § 41.41(a)(2);
2. notify appellants in writing that the Reply Brief filed November 23, 2004 will not be entered; and
3. for such further action as may be appropriate.

BOARD OF PATENT APPEALS
AND INTERFERENCES

By: 
Dale M. Shaw
Program and Resource Administrator
(571) 272-9797

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Howard J. Greenwald P.C.
349 W. Commercial Street
Suite 2490
East Rochester, NY 14445-2408